



Billing Code: 6750-01-S

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission (“FTC” or “Commission”).

ACTION: Notice; request for comments.

SUMMARY: The FTC intends to ask the Office of Management and Budget (“OMB”) to extend for an additional three years the current Paperwork Reduction Act (“PRA”) clearance for the information collection requirements in the FTC Red Flags, Card Issuers, and Address Discrepancies Rules¹ (“Rules”). That clearance expires on November 30, 2018.

DATES: Comments must be submitted by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Request for Comment part of the **SUPPLEMENTARY**

INFORMATION section below. Write “Red Flags Rule, PRA Comment, Project No. P095406” on your comment. File your comment online at

<https://ftcpublic.commentworks.com/ftc/RedFlagsPRA2> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600

Pennsylvania Avenue, NW, Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the

¹ 16 CFR 681.1 (Duties regarding the detection, prevention, and mitigation of identity theft); 16 CFR 681.2 (Duties of card issuers regarding changes of address); 16 CFR 641.1 (Duties of users of consumer reports regarding address discrepancies).

Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to Mark Eichorn, Assistant Director, Division of Privacy and Identity Protection, Bureau of Consumer Protection, (202) 326-3053, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Title: Red Flags Rule, 16 CFR 681.1; Card Issuers Rule, 16 CFR 681.2; Address Discrepancy Rule, 16 CFR Part 641

OMB Control Number: 3084-0137

Type of Review: Extension of currently approved collection

Abstract: The Red Flags Rule requires financial institutions and certain creditors to develop and implement written Identity Theft Prevention Programs. The Card Issuers Rule requires credit and debit card issuers to assess the validity of notifications of address changes under certain circumstances. The Address Discrepancy Rule provides guidance on what covered users of consumer reports must do when they receive a notice of address discrepancy from a nationwide consumer reporting agency. Collectively, these three anti-identity theft provisions are intended to prevent impostors from misusing another person's personal information for a fraudulent purpose.

The Rules implement sections 114 and 315 of the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. 1681 *et seq.*

The Commission received no relevant public comments on the Rules' information collection requirements and FTC staff's associated PRA burden analysis and estimates

that appeared in an August 8, 2018 *Federal Register* Notice.² That Notice discusses in greater detail staff's methodology behind the estimates restated here in summary form, while also providing an overview of the Rules and the statutes that underlie them.³

Pursuant to the OMB regulations, 5 CFR Part 1320, that implement the PRA, 44 U.S.C. 3501 *et seq.*, the FTC is providing a second opportunity for the public to comment on:

(1) whether the disclosure requirements are necessary, including whether the information will be practically useful; (2) the accuracy of our burden estimates, including whether the methodology and assumptions used are valid; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information.

Estimated Annual Burden (1,385,290 hours; \$66,185,200, labor costs)

A. Section 114: Red Flags and Card Issuers Rules:

(1) Red Flags:

(a) Estimated Number of Respondents: 157,585⁴

² 83 FR 39096.

³ This *Federal Register* Notice, however, corrects summary figures that had appeared in the prior Notice at Part II., page 39,097 (inadvertently carried over from the FTC's 2015 published PRA estimates). The corrections are not numerically material, however, and the calculation methodologies that appeared in the prior Notice were as intended. Further, in Part III. C. of the prior Notice, at page 39,099, 1,667 hours then intended to be shown as an estimate for address verification were omitted from the hours subtotal for Section 315 and, by extension, the aggregate estimated burden hours for the Rules. However, given statutory changes that had not then been appropriately considered, those hours had been tied to an overstatement of the relevant population affected, as explained further in footnote 9 here. Accordingly, ultimately the estimated burden related to address verification is de minimis.

⁴ This figure comprises 6,278 financial institutions and 151,307 creditors (87,774 high-risk entities, excluding financial institutions + 63,533 low-risk creditors). The total number of financial institutions draws from FTC staff analysis of state credit unions and insurers within the FTC's jurisdiction using 2015 Census Bureau data ("Statistics of U.S. Businesses") and other online industry data. The total number of creditors draws from FTC staff analysis of 2015 Census data and industry data for businesses or

- (i) High-Risk Entities: 94,052⁵
 - (ii) Low-Risk Entities: 63,533⁶
- (b) Estimated Hours Burden:⁷
 - (i) High-Risk Entities: 1,222,676 hours
 - (ii) Low-Risk Entities: 39,179 hours
- (2) Card Issuers Rule:
 - (a) Estimated Number of Respondents: 16,742⁸
 - (b) Estimated Hours Burden: 66,968 hours
- (3) Combined Labor Cost Burden: \$65,112,327

organizations that market goods and services to consumers or other businesses or organizations subject to the FTC's jurisdiction, reduced by entities not likely to: (1) obtain credit reports, report credit transactions, or advance loans; and (2) entities not likely to have covered accounts under the Rule. Currently, no further updated Census data is available online to inform revised estimates. Thus, for instant purposes, the FTC will continue to draw upon the 2015 data.

⁵ High-risk entities include, for example, financial institutions within the FTC's jurisdiction and utilities, motor vehicle dealerships, telecommunications firms, colleges and universities, and hospitals.

⁶ Low-risk entities include, for example, public warehouse and storage firms, nursing and residential care facilities, automotive equipment rental and leasing firms, office supplies and stationery stores, fuel dealers, and financial transaction processing firms.

⁷ See the August 8, 2018 Notice, 83 FR at 39098, for details underlying the Red Flags hours burden estimates.

⁸ FTC staff estimates that the Rule affects as many as 16,742 card issuers within the FTC's jurisdiction. This includes, for example, state credit unions, general retail merchandise stores, colleges and universities, and telecoms.

B. Section 315 - Address Discrepancy Rule:

- (1) Estimated Number of Respondents: 121,000⁹
- (2) Estimated Hours Burden: 56,467 hours¹⁰
- (3) Estimated Labor Cost Burden: \$1,072,873¹¹

C. Capital/Non-Labor Costs for Sections 114 and 315

FTC staff believes that the Rules impose negligible capital or other non-labor costs, as the affected entities are likely to have the necessary supplies and/or equipment already (e.g., offices and computers) for the information collections described herein.

IV. Request for Comment

You can file a comment online or on paper. For the FTC to consider your comment, we must receive it on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Write “Red Flags Rule, PRA Comment, Project No. P095406” on your comment. Your comment – including your name and your state – will be placed on the public record of this proceeding, including, to

⁹ In the August 8, 2018 Notice, the estimated number of businesses that would be required to comply with the Address Discrepancy Rule had been greatly overstated. 83 FR at 39099. The FTC Address Discrepancy Rule covers only users of consumer reports that are motor vehicle dealers described in section 1029(a) of the Dodd-Frank Act and that are predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of them, or both. See 77 FR 22200, 22201 (Apr. 13, 2012). The FTC recently estimated that there are approximately 121,000 motor vehicle dealers, determined as follows: 86,442 car dealers per NAICS data (49,905 new car dealers, 36,537 used car dealers) + [3,191 Recreational Vehicle Dealers; 7,185 boat dealers; 24,157 motorcycle, ATV/All Other Motor Vehicle Dealers] = 120,975. 82 FR 12452 (March 3, 2017). By extension, the estimated number of respondents expected to perform address verification, which had always been secondary to the estimates concerning customer verification and very small relative to the overall population subject to this Rule, becomes de minimis with the corrective adjustment to the latter. Thus, the estimates now concern customer verification only.

¹⁰ Based on an estimated average of 28 minutes per respondent. See 83 FR at 39099.

¹¹ Based on an estimated hourly wage of \$19 for administrative support personnel (computer operators; data entry and information processing workers; word processors and typists).

the extent practicable, on the public FTC Website, at <http://www.ftc.gov/os/publiccomments.shtm>.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online, or to send them to the Commission by courier or overnight service. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/RedFlagsPRA2> by following the instructions on the web-based form. When this Notice appears at <http://www.regulations.gov/#!home>, you also may file a comment through that website.

If you file your comment on paper, write “Red Flags Rule, PRA Comment, Project No. P095406” on your comment and on the envelope, and mail it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible FTC Website at <https://www.ftc.gov/>, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else’s Social Security number; date of birth; driver’s license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your

comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any “trade secret or any commercial or financial information which . . . is privileged or confidential” – as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2) – including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the public FTC Website – as legally required by FTC Rule 4.9(b) – we cannot redact or remove your comment from the FTC Website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. For information on the Commission’s privacy policy,

including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>. For supporting documentation and other information underlying the PRA discussion in this Notice, see <http://www.reginfo.gov/public/jsp/PRA/prDashboard.jsp>.

Comments on the information collection requirements subject to review under the PRA should additionally be submitted to OMB. If sent by U.S. mail, they should be addressed to Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission, New Executive Office Building, Docket Library, Room 10102, 725 17th Street, NW, Washington, DC 20503. Comments sent to OMB by U.S. postal mail, however, are subject to delays due to heightened security precautions. Thus, comments instead can also be sent by email to wlberante@omb.eop.gov.

Heather Hippsley,
Deputy General Counsel.

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